IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 3199 OF 1986.

Indian Overseas Bank,
a body corporate constituted and
established under the Banking
Companies (Acquisition and Transfer
of Undertakings) Act, 1970 having
its head office at 762, Anna Salai,
Madras in the State of Tamilnadu,
and also among others, a branch
office at Plot No.4, Revised
Schedule No.3, Annex Nataraj Cinema,
1st Road, Chembur, Bombay 400 071. ... Plaintiff.

Versus.

1. Manekrao Sarjerao Khaire,
   C/o. Narinder Road Lines,
   14/117, Acharya Commercial
   Centre, Near Basant Cinema,
   Chembur, Bombay 400 074.

2. Narinder Singh,
   14, Acharya Commercial Centre,
   Near Basant Cinema, Chembur,
   Bombay 400 074.

3. Ajit Singh,
   Group No.4, Chawl No.346,
   Room No.41/61, Tagore Nagar,
   Vikhroli, Bombay 400 083. ... Defendants.

Shri P.N.Singh i/by M/s.Vyas & Bhalwal for the Plaintiff.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 27th August, 2007.

ORAL JUDGMENT:

1. The Plaintiff has filed this suit against the Defendants for recovery of a sum of Rs.2,39,973.86 with further interest at the rate of 11.85% per annum or at the revised rate as determined by the Reserve Bank of India. There are other prayers made in the suit.

2. According to the case of the Plaintiff, the 1st Defendant is carrying on business as a transport operator. According to the case of the Plaintiff, sometime in August 1980 the 1st to 3rfd Defendants approached the Plaintiff and applied for grant of financial assistance. Accordingly, on 12th August 1980 the Plaintiff granted to the 1st Defendant a sum of Rs.1,97,000/- by way of loan under the IDBI's Refinance Scheme with interest at the rate of 18.35% per annum till the date of obtaining refinance from the IDBI and thereafter at the rate of 11.85% from January 1981 onwards. The loan was against hypothecation of the new Ford Truck valued at Rs.2,85,922/- with 25% margin. Facility of repayment of loan with interest by monthly instalments was granted to the Defendants. The 1st Defendant executed a demand promissory note dated 12th August 1980 in the sum of Rs.1, 97,000/- in favour of the Plaintiff. By the said demand promissory note, the first Defendants agreed to repay the loan amount with interest as agreed. On the same day the 1st Defendant executed a deed of hypothecation in favour of the Plaintiff by which the truck more particularly described in the said document was hypothecated in favour of the Plaintiff. The 2nd and 3rd Defendants executed a deed of guarantee dated 12th August 1980 in favour of the Plaintiff by which they guaranteed repayment of the loan amount by the 1st Defendant.

3. The 1st Defendant by a letter of acknowledgment dated 24th June 1983 confirmed, admitted and acknowledged that the amount of Rs.1,97,000/- was secured under the demand promissory note dated 12th August 1980. The 1st Defendant executed a revival letter in Form III on 23rd September 1985 and thereby admitted and acknowledged the liability to pay Rs.1,97,000/- to the Plaintiff.

4. As the 1st Defendant committed defaults in payment of the instalments, the Plaintiff by its Advocate's notice dated 27th April 1984 called upon the 1st to 3rd Defendants to pay the outstanding amount. According to the case of the Plaintiff, as on 20th December 1985 a sum of Rs.2,18,242.70 ps. was due and payable by the 1st Defendant to the Plaintiff. As there was no response to the legal notice, the present suit for recovery of the outstanding amount has been filed.

5. The 2nd Defendant filed his written statement. In the written statement, it was contended that the said Defendant was having an account with the Plaintiff. As the 1st Defendant who was known to the 2nd Defendants was intending to open an account with the Plaintiff, the 1st Defendant approached the 2nd Defendant for identification. On the request of the 1st Defendant, the 2nd Defendant attended the branch of the Plaintiff

when the then Branch Manager of the Plaintiff obtained signatures of the 2nd Defendant on certain blank forms and documents under the pretext that the same were required for the purpose of introduction and identification of the 1st Defendant to enable him to open an account. The 2nd Defendant pleaded ignorance about the transaction between the Plaintiff and the 1st Defendant. The 2nd Defendant has denied of having executed any deed of guarantee.

6. The settled issues are as under:

i) Whether the Plaintiffs prove that sum of Rs.2,39,937.86 is due and payable by the Defendants to the Plaintiffs with interest @ 18.35% as per statement of account being Exh.G and particulars of claim being Exh.H to the plaint?

ii) Whether the Plaintiffs prove that the Defendants have executed the documents being Exh.A to Exh.E to the plaint as and by way of security for the repayment of the aforesaid amount?

iii) Whether the Plaintiffs prove that the truck bearing No.MWT 2145 is duly hypothecated or charged and/or pledged by the Defendant No.1 in favour of the Plaintiffs as and by way of security for repayment of the amount prayed in prayer (a) of the plaint?

iv) Whether the Defendants prove that they have paid excess amount to the Plaintiffs and are liable for refund of an amount paid with interest?

v) Whether the Defendants Nos.2 and 3 prove that they have executed guarantee for the due repayment of loan amount due to the Plaintiffs under hypothecated vehicle No.MWT 2145?

vi) Whether the Defendants prove that they

have not admitted and acknowledged an amount of Rs.1,97,000/- secured under the Promissory Note dated 12.08.1980?

vii) Whether the Defendants prove that the suit is barred by the law of limitation?

viii) Reliefs, if any?

7. On 24th February 2006 issues were settled. The Plaintiff filed an affidavit in lieu of examination-in-chief of Shri K.Parthasarathy, Chief Manager of the Plaintiff. The Plaintiff has also placed on record original documents along with a list. The evidence of the said witness was recorded on 16th August 2007. On that day none appeared for the Defendants. Therefore, the cross examination of the said witness was treated as closed. The suit was thereafter fixed on 22nd August 2007 for the evidence of the Defendants. However, none appeared for the Defendants on that date. Therefore, arguments were heard.

8. The Plaintiff has produced and proved the demand promissory note dated 12th August 1980 in the sum of Rs.1,97,000/- executed by the 1st Defendant. The said demand promissory note has been exhibited as exhibit P-1. The Plaintiff has also produced and proved deed of hypothecation dated 12th August 1980 executed by the 1st Defendant. The said document has also been admitted in evidence and the same is marked Exh.P-2. The deed of guarantee dated 12th August 1980 (Exhibit P-3) executed by the 2nd and 3rd Defendants is also produced and

proved by the Plaintiff. The letters of acknowledgement dated 24th June 1983 and 23rd September 1985 are also produced and proved and are marked as Exh.P-4 and P-5 respectively. A copy of the demand notice dated 27th April 1984 is placed on record. An extract of the loan account of the 1st Defendant has been annexed to the plaint and another extract showing the total amount due and payable by the 1st Defendant is also produced. The same has been proved and is marked as Exh.P-6. There is no cross-examination of the witness of the Plaintiff made by the Defendants. The Plaintiff has proved execution of the demand promissory note, deed of hypothecation, the deed of guarantee, letters of acknowledgement dated 24th June 1983 and 23rd September 1983. The extract of the loan account shows that on 20th December 1985 the amount due and payable by the 1st Defendant was Rs.2,18,242.70. The Plaintiff has claimed further interest at the rate of 11.85% per annum. Thus the first three issues have to be answered in the affirmative.

9. Issue No.4 as settled does not arise out of the pleadings and the material on record and the said issue will have to be deleted. The same is the case as regards issue No.5 and 6. In so far as the bar of limitation is concerned, the 1st Defendant has signed letter of acknowledgement and letter received on 24th June 1983 and 23rd September 1985 respectively. The

suit was lodged on 15th October 1986. Therefore, the present suit is filed within limitation.

10. The contention that the signature of the 2nd Defendant was obtained by the Plaintiff-Bank on blank documents while introducing the 1st Defendant for opening a new account cannot be accepted for the simple reason that none of the Defendants have stepped into the witness box. Therefore, a case is made out for passing a decree in favour of the Plaintiff. However, considering the facts and circumstances of the case, the rate of interest will have to be fixed at 11.85% per annum on the sum of Rs.2,18,242.70 from the date of filing of the suit till realisation.

11. In so far as the 4th Defendant is concerned, no relief can be granted as no material is available against him.

12. The learned Counsel appearing for the Plaintiff states that he is pressing only the prayer clauses (a) and (b).

13. Hence there will be a decree in terms of prayer clauses (a) and (b) of the plaint with a modification that the further interest will be payable at the rate of 11.85% per annum on the sum of Rs.2,18,272.70 from the date of institution of the suit till realisation or

payment.

14. Certified copy is expedited.

Judge.